

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

v.

ORDER
97-CR-133A

DONALD BENJAMIN,
NEAL BENJAMIN,

Defendants

Judge Elfvin presided over the trial of these defendants and their initial sentencings. After the first sentencing, the Second Circuit found that remand was required and remanded for resentencing by Judge Elfvin. Judge Elfvin again resentedenced each defendant and the Second Circuit again remanded, with instructions to reassign the case to another judge.

The matter was reassigned to this Court and on November 9, 2007, the Court held a status conference and directed counsel for defendants Donald Benjamin and Neil Benjamin to file new sentencing submissions in light of the Second Circuit's remand orders and the significant changes in sentencing jurisprudence that had occurred since the defendants' sentencing submissions were initially filed. Defendant Donald Benjamin filed a submission that complied with the Court's directive. However, as to defendant Neil Benjamin's submission and the government's response, the Court requests that they be refiled to comply with the requirements below.

As to defendant Neil Benjamin, the defendant shall file a completely new

statement with respect to sentencing factors in which he lays out all of the arguments that he would like the Court to consider at sentencing, without cross-referencing or incorporating by reference any prior arguments, filings or submissions. In other words, if the defendant wants the Court to consider an argument, he needs to lay out the entire basis for the argument with supporting documents and caselaw, without referring the Court back to some earlier argument that was made in a filing submitted before the Second Circuit's remand orders and before Booker and other significant sentencing decisions.

As to the government's papers, the Court directs the government to file a separate response as to *each defendant*. The response should address all of the argument made by the particular defendant, including any arguments by a defendant for a downward departure or variance. Also, each responding submission should be a complete document and should not cross-reference or incorporate by reference other arguments made in earlier filings.

Having one complete submission (or response) as to each defendant will assist the Court in reviewing the salient arguments being made without requiring the Court to scour the record (of a trial over which it did not preside) and then determine whether the arguments being made in an earlier submission have been mooted by the Second Circuit's remand orders or by subsequent Supreme Court cases, or both.

Defendant Neil Benjamin shall file his comprehensive statement with respect to sentencing factors by July 18, 2008. The government shall file its responses to the defendants' submissions by August 1, 2008, and the defendants may file any reply by August 8, 2008.

Sentencing of defendant Donald Benjamin is adjourned to August 13, 2008, at 12:30 p.m. and sentencing of defendant Neil Benjamin is adjourned to August 14, 2008, at 12:30 p.m.

SO ORDERED.

s/ Richard J. Arcara
HONORABLE RICHARD J. ARCARA
CHIEF JUDGE
UNITED STATES DISTRICT COURT

DATED: July 3, 2008